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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

R. J. ROSS,

Plaintiff,

v.

BERNIECE W. HARRIS, ET AL.,

Defendants

STANLEY R. CAIDIN,

Plaintiff,

v.

BERNIECE W. HARRIS, ET AL.,

Defendants

STATEMENT AS TO JURISDICTION

Stanley R. Caidin and R. J. Ross, pursuant to the United States Supreme Court Rule 12, Paragraph 1, file this their statement of the basis upon which it is contended that the Supreme Court of the United States has appellate jurisdiction:

I

The appeal herein is from an order made and entered by the District Court of the United States, especially constituted under Section 2284, 28 United States Code Annotated. By reason of the application of Stanley R. Caidin and R. J. Ross to the said District Court for an interlocutory and permanent injunction restraining the enforcement, operation and execution of an Act of Congress for repugnance

to the Constitution of the United States, the said application therefor was heard and determined by a District Court of three judges pursuant to Section 2282, 28 United States Code Annotated. By Section 1253 of United States Code Annotated, a direct appeal to the Supreme Court of the United States may be taken from the final decree made by such specially constituted District Court.

II

The act of Congress which is involved is Public Law 699, Chapter 721, Laws of 81st Congress, Second Session, which was enacted on August 16, 1950. The said Act, which is an act to authorize the exclusion from the mails of all obscene, lewd, lascivious, indecent, filthy or vile articles, matters, things, devices or substances, and for other purposes provide in part as follows:

> "That, upon evidence satisfactory to the Postmaster General that any person, firm, corporation, company, partnership, or association is obtaining, or attempting to obtain, remittances of money or property of any kind through the mails, for any obscene, lewd, lascivious, indecent, filthy, or vile articles, matter, thing, device or substance or is depositing, or is causing to be deposited, in the United States mails information as to where, how, or from whom the same may be obtained, the Postmaster General may (a) instruct Postmasters at any Post Office at which registered letters or any other letters or mail matter arrive directed to any such person, firm, corporation, company, partnership, or association, or to the agent or representative of such person, firm, corporation, company, partnership or association, to return all such mail matter to the Postmaster at the office at which it was originally mailed, with the word 'Unlawful' plainly written or stamped upon the outside thereof, and all such mail matter so returned to the senders thereof, under such regulations as the Postmaster General may prescribe . . ."

III

The order appealed from was made and entered on the 25th day of February, 1952.

IV

The application for appeal was presented on March 25, 1952.

V

The order appealed from vacated a temporary restraining order issued in the above entitled causes and further the said order appealed from dissolved the specially constituted three-judge court. It was alleged in the respective complaints in the above captioned causes that Public Law 699 violated the 1st, 4th, 5th, 6th and the 8th Amendments to the Constitution of the United States, and Article III, Section 2, of the said Constitution of the United States. A temporary restraining order was continued in full force and effect by the specially constituted court. After the case was duly submitted on the application for an interlocutory and permanent injunction by Stanley R. Caidin and R. J. Ross, the court made and entered the order vacating the temporary restraining order, and dissolving the three-judge court as hereinabove set forth. It is from that final order of the court that this appeal is taken.

VI

The questions presented by this appeal are substantial and novel. The constitutionality of Public Law 699 has never been determined by the Supreme Court of the United States. Additionally, Stanley R. Caidin, as a sender of mail, is attacking the constitutionality of Public Law 699, and a novel question is presented to the Supreme Court of the United States, which question was itself suggested by the Supreme Court in the case of *Donaldson* v. *Reed Maga-*

sine, 333 U. S. 178, 92 L. Ed. 628, which question is applicable in the instant case, and which question may be phrased as follows: Whether or not Public Law 699, in violation of the first amendment, or any other constitutional provisions, abridge the freedom of speech or press of either the senders or the sendees of mail or money orders. In the instant case, Stanley R. Caidin, as a sender of mail, is attacking the constitutionality of the statute. The Supreme Court of the United States has never ruled directly on the constitutionality of the statute in question or any similar statute with respect to the rights of senders of mail. It is thus evident that important issues are presented by this appeal, and that substantial questions are raised which call for the appropriate exercise of appellate jurisdiction.

VII

The following decisions of this court are believed to sustain jurisdiction of this appeal under said Section 1253 of 28 United States Code Annotated:

St. John v. *Wisconsin Employment Relations Board*, 71 S. Ct. 375, 340 U. S. 411, 95 L. Ed. 386;

Radio Corporation of America v. *United States*, 95 Fed. Supp. 660, affirmed 71 S. Ct. 806, 341 U. S. 412, 95 L. Ed. 1062;

Fleming v. *Rhodes*, 67 S. Ct. 1140, 331 U. S. 100, 91 L. Ed. 1368;

Stafford v. *Wallace*, 42 S. Ct. 397, 258 U. S. 495, 66 L. Ed. 735;

Morgan v. *United States*, 56 S. Ct. 906, 298 U. S. 468, 80 L. Ed. 1288;

Brucker v. *Fisher*, 49 F. 2d 759.

Respectfully submitted,

HAROLD JUDSON,
STANLEY R. CAIDIN,
Attorneys for Plaintiffs.

APPENDIX "A"

ORDER DISSOLVING THREE-JUDGE COURT

Each of the above cases was based upon an order of the Postmaster General No. 44665 issued on November 30, 1950. It appears from verified affidavit of the defendant Harris, and is not disputed by the plaintiffs, that on October 15, 1951 the Postmaster General of the United States issued Order No. 48149, which revoked Order No. 44665. There is, therefore, no question presently requiring a hearing or determination by the District Court of three judges under Section 2282 or 2284 of Title 28 United States Code. It is therefore hereby ordered that the order of the three-judge court continuing in full force and effect the temporary restraining orders issued in the above entitled matters pending a decision by said three-judge court be, and the same is hereby vacated. The vacation of such orders on the ground that the issues have become moot is not to be taken to indicate that the members of the special court have thereby invited an inference that they are of the opinion that the cases initially raised issues requiring action by a court so constituted.

It is further ordered that the three-judge court constituted by the order of the Chief Judge of the United States Court of Appeals for the Ninth Circuit dated February 15, 1951 be dissolved and discontinued.

Dated this 5th day of February 1952.

(S.) WALTER L. POPE,
WILLIAM M. BYRNE,
PEIRSON M. HALL.